

United States  
<sup>14</sup>  
Circuit Court of Appeals  
For the Ninth Circuit.

---

E. L. COBB, as Trustee in Bankruptcy of the  
CRAIG LUMBER COMPANY, a Corpora-  
tion, Bankrupt,

Appellant,  
vs.

McDONALD-WEIST LOGGING COMPANY, a  
Corporation,

Appellee.

---

Transcript of Record.

---

Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1.

---

FILED

JUL - 2 1921

F. D. MONCKTON,  
CLERK



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

---

E. L. COBB, as Trustee in Bankruptcy of the  
CRAIG LUMBER COMPANY, a Corpora-  
tion, Bankrupt,

Appellant,  
vs.

McDONALD-WEIST LOGGING COMPANY, a  
Corporation,

Appellee.

---

Transcript of Record.

---

Upon Appeal from the United States District Court for the  
District of Alaska, Division No. 1.

---



# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

---

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	Page
Assignments of Error.....	38
Certificate of Clerk U. S. District Court to Transcript of Record.....	44
Certificate of Referee to Judge.....	27
Citation on Appeal.....	41
Claim of MacDonald-Wiest Logging Company..	1
Decision of Referee.....	7
Memorandum Opinion.....	28
Names and Addresses of Attorneys of Record...	1
Objections of the Trustee to the Claim and Lien of the MacDonald-Wiest Lumber Co., a Corporation.....	3
Opinion, Memorandum.....	28
Order Affirming Decree of Referee.....	36
Order Allowing Claim.....	21
Petition for Allowance of Appeal and Order Allowing Same.....	39
Petition of Trustee for Review.....	25
Praecipe for Transcript of Record.....	43
Stipulation in Re Certain Facts.....	23



**Names and Addresses of Attorneys of Record.**

JOHN H. COBB, Esq., Juneau, Alaska,

Attorney for Appellant.

Messrs. RODEN & DAWES, Juneau, Alaska,

Attorneys for Appellee.

---

In the District Court for the District of Alaska, Div.  
No. One, at Juneau.

IN BANKRUPTCY—No. ——.

Claim No. 31.

In the Matter of the CRAIG LUMBER COMPANY,  
a Corporation,

Bankrupt.

**Claim of MacDonald-Wiest Logging Company.**

United States of America,

Territory of Alaska,

Division No. One,—ss.

At Juneau, in said District of Alaska, Division No. One, on May 22d, 1919, came L. J. McDonald, of Ketchikan Alaska, in said Division and District, and made oath and says: That the said Craig Lumber Company, a corporation, the corporation for whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition and still is justly and truly indebted to the said McDonald-Wiest Lumber Company, a corporation, in the sum of \$27,871.50, with interest thereon, from December 20th, 1918, at 8% per annum amounting in all to \$28,328.90; that the consideration of said debt is as follows:

“For logs sold and delivered to the said Craig Lumber Company, a bankrupt, during the period from January 1st, 1918, to December 20th, 1918.”

And that no part of said debt has been paid and that there are no offsets nor counterclaims to the same; that said debt was due on December 20th, 1918, and is still due, and that no note has been received for such account nor any judgment rendered thereon, and that said McDonald-Wiest Lumber Company has not, nor has any person by its order or to its knowledge or belief for its use had or received any manner of security for said debt whatever, except that said company claims and holds a lien on logs and lumber as more particularly set out in the hereto attached copy of complaint, and that this deponent is the treasurer of the said McDonald-Wiest Lumber Company, and is duly authorized by said corporation [1\*] to make this affidavit and proof for the said corporation and in its behalf.

L. J. MacDONALD.

Subscribed and sworn to before me this May 22d, 1919.

[Notarial Seal]

H. L. FAULKNER,  
Notary Public for Alaska.

My commission expires Nov. 14, 1922. [2]

---

\*Page-number appearing at foot of page of original certified Transcript of Record.

In the United States District Court for Alaska,  
Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

In the Matter of the CRAIG LUMBER COMPANY,  
a Corporation,

Bankrupt.

**Objections of the Trustee to the Claim and Lien of  
the MacDonald-Weist Lumber Co., a Corpora-  
tion.**

Now comes E. L. Cobb, Trustee of the Estate of the above-named Craig Lumber Company, bankrupt, and objects to the proof of claim filed by the MacDonald-Weist Lumber Company, a corporation of the State of Washington and prays that the same may not be allowed on the following grounds, to wit:

1. Said claim is not a claim provable in bankruptcy, for the reason that the said MacDonald-Weist Lumber Company is a foreign corporation; that it never complied with the laws of Alaska concerning foreign corporations doing business in Alaska and at no time, and is not now authorized to do business in Alaska; that the said claim is founded upon and grows out of a contract for cutting logs in Alaska, which is the business of said company, which said contract was, and is, illegal and void.

2. Said MacDonald-Weist Lumber Company falsely asserts and alleges the consideration and amount of its claim in this: Said claim alleges the consideration to be "For logs sold and delivered to the said Craig Lumber Company, a Bankrupt, during

the period from January 1st, 1918, to December 20th, 1918."

That in truth and in fact the consideration for said claim was a contract made by and between the said bankrupt and said claimant in the year 1917, whereby the claimant undertook to cut, put in the water and boom logs belonging to the Craig Lumber Company and situated in Alaska at the rate of Ten (\$10.00) Dollars per M. B. M.

That said contract was illegal and void for the reasons [3] set out in the first paragraph hereof, but if the same had been legal, there was not, and is not due thereon, the sum of \$28,328.90, for that, the statement, "that no part of said debt has been paid" is untrue; that in fact, the Craig Lumber Company, bankrupt, paid upon said contract, the sum of \$12,660.30, and there was not due on said contract (if the same had been legal) to exceed the sum of \$19,527.30.

3. The claim of a lien upon logs and lumber belonging to the bankrupt estate made by the said MacDonald-Wiest Lumber Company, a corporation, to secure said claim is void, because (1) the said company is a foreign corporation, and had not at the time it was engaging in the business out of which said claim grew and at the time it attempted to fix its alleged lien by filing its claim of lien, complied with the laws of Alaska, so as to be legally authorized and empowered to do business in Alaska. (2) The claim of lien filed by the said MacDonald-Wiest Lumber Company is false and fraudulent in this: The said claim alleges that under its said contract with the

Craig Lumber Company, Bankrupt, it had cut, felled and boomed 3,762,310 feet B. M. of logs, and had only been paid the sum of \$9,748.50, while in truth and in fact the said MacDonald-Weist Lumber Company had under its said contract cut, felled and boomed not to exceed 3,218,760 feet B. M., and had been paid the sum of \$12,660.30. That no claim of lien for the amount due under said contract (if the same had been legal) was ever filed by the said MacDonald-Weist Lumber Company.

4. The said MacDonald-Weist Lumber Company is a corporation, and during the year 1918, and prior thereto, was engaged in the business of contracting on a large scale for the getting out and delivery of logs from the forests to lumber-mills, which contracts it carried out and performed by the employment of large forces of laborers, but itself did no labor whatsoever, and is not "a person" to whom a lien is given on logs within the purview and meaning of the statutes of Alaska (Compiled Laws section No. 709) providing for liens [4] upon logs.

5. The claimed lien upon 2,000,000 feet of lumber at the mill of the Craig Lumber Company, Bankrupt is void, for the reasons aforesaid, and for the further reason, that said notice of lien fails to show that the MacDonald-Weist Lumber Company performed any labor or rendered any service in the manufacture of said lumber, and in truth and in fact said company did not perform any labor or render any service in the manufacture of said lumber.

WHEREFORE the trustee prays that the said claim of the MacDonald-Weist Lumber Company be

disallowed and expunged, and for such other orders as to the Court may seem proper.

J. H. COBB,

Attorney for the Trustee.

United States of America,  
Territory of Alaska,—ss.

E. L. COBB, being first duly sworn, on oath, deposes and says: I am the trustee above named. The above and foregoing objections are true to the best of my knowledge and belief.

E. L. COBB.

Subscribed and sworn to before me this the 16th day of August, 1919.

[Notarial Seal]

J. H. COBB.

Notary Public in and for Alaska.

My commission expires June 8, 1923.

Service of the above and foregoing objections of the trustee admitted this the 18th day of August, 1919.

JOHN RUSTGARD,

Attorney for the MacDonald-Wiest Lumber Company.

Filed August 18, 1919. H. B. Lefevre, Referee in Bankruptcy, First Division of Alaska, Box 613 Juneau, Alaska. [5]

In the United States District Court for the District of Alaska, Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

In the Matter of CRAIG LUMBER COMPANY, a Corporation,

Bankrupt,

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WIEST LOGGING COMPANY,  
Respondent.

JOHN H. COBB, Esq., for Petitioner.

JOHN RUSTGARD, Esq., for Respondent.

**Decision of Referee.**

This controversy arose upon the petition of the trustee objecting to the allowance of the claim of the McDonald-Wiest Logging Company, as a lien claim, upon the grounds:

1. That the respondent was without right of recourse to prosecute his cause for the reason that it was a corporation and had not complied with such requirements of the laws of Alaska as would permit it to maintain actions in the courts, and upon other grounds hereinafter set forth. The referee having decided against the respondent upon the first grounds, respondent appealed and upon such appeal the Judge reversed the referee, whereupon the petitioner appealed to the Circuit Court of Appeals, where the decision of the Judge was sustained and

the controversy was again brought before the referee for his decision upon the other questions of law involved in the controversy as follows:

1. That respondent is a corporation and as such has no right of lien.
2. That natural persons comprising the corporation have no right of lien.
3. That some of the logs being converted into lumber the lien does not follow into the lumber. [6]
4. That the liened logs were mixed with other logs and that there being no way to designate which lumber came from such logs so liened and, therefore, to such extent, the lien is lost.

### I.

The McDonald-Wiest Lumber Company is and during all the time herein mentioned was a corporation duly organized and existing as such under and pursuant to the laws of the State of Washington; that said corporation had paid its license fee required by the laws of Alaska for the years 1918, 1919 and 1920, in due time; that the following documents, but none others, were filed by the said corporation in the office of the Secretary of the Territory of Alaska, to wit:

1. Certified copy of articles of incorporation, filed January 28, 1918.
2. Appointment and consent of L. J. McDonald as resident agent, filed January 28, 1918.
3. Financial statement signed by G. B. McDonald as acting President and as Secretary, but not sworn to nor attested by a majority of the directors, filed February 16, 1918.

4. Financial statement sworn to by J. B. McDonald as President and Secretary, but not attested by a majority of the directors, filed February 27, 1919.

That the following documents were filed by said corporation in the office of the clerk of the Court for the First Division, at Juneau, Alaska, to wit:

1. Certified copy of articles of incorporation, filed December 12, 1917.
2. Appointment of L. J. McDonald as resident agent, filed December 12, 1917.

The consent of the agent attached to the resolution appointing the agent above referred to reads as follows: [7]

“I, L. J. MacDonald, a resident of the First Judicial Division of the Territory of Alaska, residing at Craig in said Division, having been appointed resident agent for the McDonald-Weist L. Co., a foreign corporation, hereby accept said appointment for all purposes set forth in the foregoing certificate.

Dated at Craig, Alaska, this 20th day of November, 1917.

---

That the name “L. J. MacDonald,” the word “First,” immediately prior to the words “Judicial Division,” and the “McDonald-Weist L. Co.” and the name “Craig” are all written with pen and are in the handwriting of L. J. MacDonald, the remainder of the Certificate being printed.

3. Annual report, filed February 11, 1919, sworn to by the President but not attested by the directors.

## II.

That the Craig Lumber Company, a corporation, the bankrupt above named, during all the time herein mentioned was organized and existing as a corporation under and by virtue of the laws of the State of Washington, and had complied with the laws of the Territory of Alaska authorizing foreign corporations to do business in said Territory.

## III.

That on or about the 2d day of January, 1918, at Wrangell, Alaska, the MacDonald-Wiest Lumber Company entered into verbal contract with the Craig Lumber Company, whereby the former was to cut and boom logs for the Craig Lumber Company from a timber tract on Long Island in the First Division of Alaska, said tract being on the United States Forest reserve and having been purchased by the Craig Lumber Company from the United States Government. The MacDonald-Wiest Lumber Company agreed to cut and boom the logs from said timber tract and make the same ready for towage for the price of ten dollars per thousand feet board measure, the Craig Lumber Company to do the towing, and the said [8] Craig Lumber Company agreed to pay the MacDonald-Wiest Lumber Company the sum of ten dollars for every thousand feet of logs cut and boomed by it from the said tract. The Craig Lumber Company agreed to pay all stumpage charges, do all its own towing at

its own risk, tow all the scows, floats, float-houses and general logging equipment of the MacDonald-Weist Lumber Company from Wrangell, Alaska, to Howkan, Alaska, the place where the logs were to be cut, free of charge; to return all boomsticks to the MacDonald-Weist Lumber Company at Howkan, or, if the Craig Lumber Company kept and used any boomsticks, to pay for the same at the rate of ten dollars per thousand feet, board measure; to furnish all necessary boom chains, free of cost, and to make payment for each raft as soon as the same was completed and taken in tow by the Craig Lumber Company's tug.

The MacDonald-Weist Lumber Company, under this contract, during the year 1918 cut, rafted and delivered to the Craig Lumber Company 3,376,300 feet of logs, and under said contract cut but did not raft or deliver 350,000 feet board measure of logs, the said last amount of logs being at the spar-tree on the tract in question and ready for rafting at the time the MacDonald-Weist Lumber Company was ordered by the bankrupt to discontinue cutting under the contract. The logs delivered by the MacDonald-Weist Lumber Company to the bankrupt during the year 1918 were towed by the Craig Lumber Company from the MacDonald-Weist Lumber Company's camp near Howkan, Alaska, to the Craig Lumber Company's mill at Craig, Alaska, and sawed into lumber by the Craig Lumber Company, except that some of said logs, amounting to some 250,000 feet, were in the log-pound at said Craig Lumber Company's mill at Craig, Alaska, unsawed, at the

time the said company became bankrupt. Under and pursuant to the contract above mentioned, the [9] MacDonald-Wiest Lumber Company cut for and delivered to the Craig Lumber Company the following rafts, on the dates below given, to wit:

1918.

June	1.	Raft No. 1	342,780 feet	\$ 3,427.80
"	1.	Raft No. 2	264,000 "	2,640.00
July	6.	Raft No. 3	302,000 "	3,020.00
"	31.	Raft No. 4	420,010 "	4,200.10
Aug.	1.	Raft No. 5	291,120 "	2,911.20
"	1.	Raft No. 6	287,310 "	2,873.10
Sept.	30.	Raft No. 7	297,870 "	2,978.70
Oct.	10.	Raft No. 8	269,260 "	2,692.60
"	10.	Raft No. 9	330,860 "	3,308.60
"		Raft No. 10	288,960 "	2,889.60
Nov.	22.	Raft No. 11	282,130 "	2,821.30
		Boomsticks	53,126 "	531.26
		"	350,000 "	3,500.00

3,779,426 ft. @ \$10. \$37,794.26

The operations of claimant under said contract commenced in the month of April, 1918. The two first rafts mentioned in the above list were delivered prior to the first day of July, 1918. The third raft above mentioned was delivered on the 6th day of July, 1918, and the fourth raft above named was delivered on the 31st day of July, 1918. The logs in the fourth raft above mentioned were all cut during the month of July, 1918, and the logs in all the other rafts were cut and delivered subsequent to the first day of July, 1918. All the logs delivered subsequent to August, 1918, were cut after the first of August, 1918.

That on the 20th day of December, 1918, the Craig Lumber Company directed the MacDonald-Weist Lumber Company to discontinue cutting logs under the aforementioned contract and to discontinue their operations. That at that time claimant had logs at the spar-tree on the tract in question amounting to 300,000 feet; that the same were ready to be made into rafts, and that the actual cost of booming the said logs would be not to exceed one dollar per thousand feet board measure, [10] that at the time the said operations were so discontinued the Craig Lumber Company had paid to the MacDonald-Weist Lumber Company under said contract the sum of \$10,544.57, and no more, and that no more has been paid on said account since; that said sum had been paid in installments by way of bank checks or freight advances or by merchandise, and so credited by the MacDonald-Weist Lumber Company upon the first deliveries made, each payment credited being applied upon the oldest claim against the bankrupt; and that at the time the Craig Lumber Company was adjudged bankrupt there was due and owing claimant upon said account above set out the sum of \$27,871.50. That on the thirtieth day of December, 1918, and within six months after all the work had been done in cutting said logs for which said indebtedness had been incurred, claimant filed its lien, duly verified, in the office of the Recorder of Ketchikan Recording Precinct, within which said logs and the lumber sawed therefrom were located and situated, and within which the work had been done, which lien was filed pursuant to the provisions of

Sections 709 to 715, inclusive, of the Compiled Laws of Alaska, a copy of which lien statement so filed is hereto attached and made a part of this statement of facts.

That during all the time herein mentioned the sole stockholders of the MacDonald-Wiest Lumber Company were J. B. MacDonald, L. J. MacDonald, Allan MacDonald and C. P. MacDonald, all brothers. During the year 1918 the officers of the said corporation were J. B. MacDonald, President and Secretary, and L. J. MacDonald, Treasurer. That all of the said stockholders performed manual labor in the cutting and booming of the aforementioned logs. G. B. MacDonald helped to fall timber, assisted in booming or rafting, kept the books and cut the wood for the cook-house. L. J. MacDonald, Treasurer, performed the duty of timber-faller, at times was engineer in charge of the donkey-engine used in getting the logs into the water, and assisted in booming up and other [11] work. Allan MacDonald, stockholder, worked as hook-tender and at times helped to fall timber and also did the blacksmith work. C. P. MacDonald worked as engineer on the other donkey, performed the duty of high climber and rigging the spar-tree (high lead), and generally assisted in the actual work of cutting and booming said logs. All the said MacDonalds, during the year 1918, averaged not less than twelve hours a day during seven days a week of the very hardest labor in the actual work of cutting said logs for the Craig Lumber Company from about the first day of March, 1918, to the 20th day of December, 1918.

That during the season when the logs were being cut the said MacDonalds had an average of *our* men to assist them, some of the time they had none, some of the time they had two other men and at times they had as many as six or eight, but the average would be four men in addition to themselves.

That the logs in question, with the exception of those left at the spar-tree and one raft of 350,000 feet ready for delivery at Howkan, were towed to the Craig Lumber Company's sawmill at Craig and there placed in the log-pound of the mill, ready for sawing into lumber. All of said logs, except a raft of about 300,000 feet in the log-pound at the mill, were sawed at the said bankrupt's mill and piled in the lumber-yard of said bankrupt company at Craig. The remainder was left in the log-pound at the time the sawmill operations closed and were taken over by the trustee in bankruptcy, as was also the lumber in the yard. Of all the logs received or sawed by the bankrupt company at the said mill, eighty per cent consisted of the logs above mentioned and cut by claimant, the MacDonald-Weist Lumber Company. The other twenty per cent received by or cut by the bankrupt were furnished by others not interested in the MacDonald-Weist Lumber Company. That the lumber cut from the said logs furnished by the MacDonald-Weist Lumber Company was in the lumber-yard, mixed with lumber cut from the logs furnished by other parties, at the time of bankruptcy. That some [12] three million feet, more or less, as the inventory of the trustee may show, of the lumber cut from said logs was in the lumber-

yard of the bankrupt at the time the trustee was appointed. That the MacDonald-Wiest Lumber Company claims a lien upon the said logs and the lumber cut therefrom and remaining in the mill-pound at Craig or in the form of rafts at Howkan or in the form of lumber in the mill-yard above mentioned, and claims the prior right to have the funds received by the trustee from the sale of said logs and lumber applied upon the claim above named of the MacDonald-Wiest Lumber Company.

COPY.

LABORER'S LIEN, AMENDED.

MacDONALD-WIEST LUMBER CO.,

Claimant,

vs.

CRAIG LUMBER CO., a Corporation,

Defendant.

NOTICE IS HEREBY GIVEN, that the MacDonald-Wiest Lumber Company, a corporation organized under the laws of the State of Washington and doing business in Alaska, claims a lien upon the following logs, lumber and personality and improvements, to wit:

One certain raft of logs situated in the Mission Cove, Long Island, Howkan, Southeastern Alaska, consisting of 300,000 feet, more or less in a boom; together with 300,000 feet of loose logs piled at a spar-tree close to Howkan, Alaska; together with 275,000 feet of logs in a pocket boom situated above the mill in the vicin-

ity of Craig, Alaska; said logs were all cut and felled from standing timber at and near Howkan, Alaska, by said claimant between March 1, 1918, and December 20, 1918, consisting of spruce and hemlock;

Together with 2,000,000 feet of lumber, of all dimensions principally rough, with some dimension lumber, all of which remains and now is situated in the yard of said defendant where the same was manufactured, together with the dock, one cook-house and four bunkhouses, all in said yard, and all of said lumber and buildings and improvements having been manufactured out of 3,112,310 feet of logs, cut and felled by said claimant and furnished to said defendant under the contract herein set forth.

Said claimant claims a lien upon all aforesaid logs, lumber and improvements for labor performed upon and assistance rendered in obtaining, securing, cutting and manufacturing said logs and lumber at the instance of said owner.

That the name of the owner, or reputed owner, of said logs and lumber is the Craig Lumber Company, a corporation, organized under the laws of the State of Washington and doing business in Alaska; that [13] said Craig Lumber Company employed said MacDonald-Weist Lumber Company to perform such labor and render such assistance upon the following terms and conditions: Defendant purchased the standing timber from which said logs were cut, and employed claimant to cut and fall and boom the same at Howkan, Alaska, at an agreed compensa-

tion of \$10.00 per thousand B. M., payable when boomed at Howkan, Alaska, defendant to take said logs at said point ready for delivery to its tow-boat; that claimant cut, felled and boomed 3,762,310 b. d. ft. of logs under said contract, and has faithfully performed and fully complied with said contract on its part, and claimant performed labor and assisted in cutting, falling and manufacturing said logs and lumber for a period beginning March 1, 1918, and ending December 20, 1918, and thirty days have not elapsed since that time; that the amount of said claimant's demand for such services is \$37,620.00; that no part thereof has been paid, except \$9,748.50, and there is now due and remaining unpaid thereon, after deducting all just credits and offsets, the sum of \$27,871.50, in which amount claimant claims a lien upon said property:

MacDONALD-WIEST LUMBER COMPANY.

By L. J. MacDONALD,  
Manager.

United States of America,  
Territory of Alaska,—ss.

L. J. MacDonald, being first duly sworn, on his oath says: That he is the treasurer and manager of the above MacDonald-Wiest Lumber Company, and by resolution duly authorized to file and sign the foregoing claim, that he has read the same, knows the contents thereof, and believes the same to be true.

L. J. MacDONALD.

Subscribed and sworn to before me this 30th day of December, 1918.

CHAS. E. INGERSOLL,  
Notary Public for Alaska.

My commission expires Oct. 5, 1922.

No. 107.

This certifies that the within instrument was filed for record on the 31 day of Dec., 1918, at 2 o'clock P. M. in vol. 2 of Liens, at page 10, of the Records of said office at Ketchikan, Alaska.

WM..T. MAHONEY,  
Recorder.

United States of America,  
Ketchikan Precinct No. 8,  
Div. No. 1, Alaska,—ss.

I, Henry C. Story, U. S. Commissioner for the Ketchikan Precinct No. 8, Div. No. 1, Alaska, and Recorder for the Ketchikan Recording District No. 8, Alaska, do hereby certify that the attached Laborer's Lien Amended, filed by MacDonald-Wiest Lumber Company, Claimant, vs. Craig Lumber Co., a Corporation, Defendant, is a full, true, and correct copy of the original of the same, and the whole thereof, as it appears of record in the records of the Ketchikan Recording Office in my office in Volume 2 of Liens at page 10, filed for record and recorded on the 31st day of December, 1918, at 2 o'clock P. M.

In Testimony Whereof I have hereunto set my hand and the official seal of my office on this 9th day of March, 1918.

HENRY C. STORY,  
U. S. Commissioner for Ketchikan Precinct No. 8,  
and Recorder for said Precinct, Alaska.

Filed September 27, 1919. H. B. LeFevre, Referee in Bankruptcy, First Division in Alaska. Box 613, Juneau, Alaska. [14]

This decision is based upon the foregoing facts proven at the hearing before the referee on December 20, 1920:

From which statement of facts the referee concludes and decides:

1. It does not seem reasonable that either a corporation or a contracting firm could be designated a laborer (defined in Shultz vs. Shively, 143 P. 1115, and in Day vs. Green, 127 P. 772) under the meaning of the section. The principal of a laboring proxy under the Alaska labor lien law is precluded from all the rights of the lienor for the right of lien is not assignable, though the lien, when perfected by the actual laborer, may be. An artificial person can have labor performed but cannot labor. The doctrine is very plainly stated in D. C. L., V. 17, p. 1118, par. 43, Sec. 709, C. L. A., is adopted from the Oregon Code, and its text is quoted *verbatim* by the Supreme Court of Oregon in its decisions. In none of the Oregon cases traceable through the Pacific Digest has the Court in any way intimated that corporations and contracting firms are laborers within the scope of the section which explains: "The cook in a logging camp and any and all others who may assist in or about a logging camp shall be regarded as a person who assists in obtaining or securing the saw logs \* \* \* "

2. Contractors, even though they labor individually, have no right of lien. *Ibid.*

3. The lien attaches to the material of the logs even after it has been converted into lumber.

4. Confusing the output from the logs does not

destroy the lien which attaches to the logs after they are converted into lumber, that is to say, the lumber, especially when lumber, or the money derived from its sale, is still in the hands of the party who contracted for the labor.

Upon that respondent is a corporation and a contractor, its claim as a lien claim is disallowed.

December 29, 1920.

H. B. LEFEVRE,  
Referee in Bankruptcy,  
First Division of Alaska,  
Box 613 Juneau, Alaska. [15]

---

In the United States District Court for the District of Alaska, Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

In the Matter of CRAIG LUMBER COMPANY, a Corporation.

Bankrupt.

E. L. COBB,

Petitioner,

vs.

McDONALD-WIEST LOGGING COMPANY,  
Respondent.

JOHN H. COBB, ESQ.

JOHN RUSTGARD, Esq.

Order Allowing Claim.

At Juneau, December 30th, 1920.

This cause came on for hearing before the referee upon the appearance of the attorneys for the parties on the 20th day of December, 1920, John H. Cobb,

Esq., appearing for the petitioner and John Rustgard, Esq., appearing for the respondent. Whereupon John Rustgard, Esq., on behalf of the respondent, submitted record evidence and respondents statement of facts. Whereupon the hearing was continued for the day and on the 21st day of December, 1920, John S. Cobb, Esq., filed a statement of facts on behalf of the petitioners, and the parties having submitted their respective arguments, citations and briefs, and it appearing from the records and files of this Court that the referee has regained jurisdiction of the controversy, limited to the questions at issue that have not been decided, and having rendered and entered his decision, in which all matters and things at issue are fully set out; that all necessary notice has been given to establish said claim as a general claim, effective and of full force and virtue from the [16] date of its filing; that all the issues in controversy are of law and no issues upon the facts have been raised, the Court hereby adopts the findings in the referee's decision herein; and all matters and things being heard, understood and considered, it is

ORDERED That the claim of the McDonald-Wiest Logging Company Numbered 31, for \$28,328.90 with interest amounting to \$457.40, be and hereby is disallowed as a lien claim; and it is

ORDERED That the status of said claim be and hereby is established as a general claim with all rights and benefits attaching and of full force and virtue at and from the date of its filing; and it is

ORDERED That, upon the McDonald-Wiest Logging Company, respondent, consenting to the status

of said claim as a general claim, the trustee do pay said respondent, the McDonald-Wiest Logging Company, from the moneys of the estate in his hands, twelve per cent of the amount of said claim and of the interest thereon due, and that said claim do fully participate in all dividends hereinafter paid to the general creditors.

H. B. LEFEVRE,  
Referee in Bankruptcy,  
First Division of Alaska,  
Box 613 Juneau, Alaska. [17]

---

In the United States District Court for Alaska,  
Division Number One, at Juneau.

**IN BANKRUPTCY—No. 31.**

In the Matter of THE CRAIG LUMBER COMPANY, a Corporation,

Bankrupt.

In the Matter of the Claim of the MacDONALD-WIEST CO., a Corporation.

**Stipulation in Re Certain Facts.**

It is hereby stipulated, for the purposes of the decision of the above matter in the District Court, that the following facts are true, and were before the Referee, and the decision of the Referee, expunging the claim was based thereon.

**I.**

The MacDonald-Wiest Company is a corporation of the State of Washington.

**II.**

The contract upon which the claim in controversy is based, and out of which it grows, was made in the Territory of Alaska on the 2d day of January, 1918, and was to be performed entirely within the Territory of Alaska.

**III.**

On December 12th, 1917, the MacDonald-Wiest Company filed in the office of the clerk of the District Court for the First Division, the *follow* papers, and no others to wit:

(a) A certified copy of its Charter or Articles of Incorporation.

(b) Its written consent to be sued, and the appointment of L. J. MacDonald as its agent.

(c) A document attached to document (b) filled out in the handwriting of L. J. MacDonald which was, in form, an acceptance of the appointment, but the same was never subscribed by the said L. J. MacDonald.

**IV.**

The MacDonald-Wiest Company filed in the office of the Secretary of Territory of Alaska the following documents and no others, at the dates mentioned, to wit: [18]

(a) Charter filed January 28th, 1918.

(b) Appointment of agent and acceptance of appointment filed January 28th, 1918.

(c) Annual statement filed February 16th, 1918.

(d) Annual statement filed February 27th, 1919.

**V.**

The Annual Statement filed February 16th, 1918,

was not verified by the President and Secretary of the MacDonald-Weist Company, nor attested by the directors, and the Annual Statement filed February 27th, 1919, was not attested by a majority of the directors.

JOHN RUSTGARD,  
Attorney for Appellant.

J. H. COBB,  
Attorney for Trustee.

Filed in the District Court, District of Alaska,  
First Division. Dec. 15, 1919. J. W. Bell, Clerk.  
By \_\_\_\_\_, Deputy. [19]

---

In the District Court for Alaska, Division No. 1, at  
Juneau.

IN BANKRUPTCY—No. 31.

In the Matter of THE CRAIG LUMBER COMPANY, a Corporation,  
Bankrupt.

In the Matter of the Claim of the MacDONALD-  
Wiest Logging Co.

**Petition of Trustee for Review.**

Comes now the trustee in bankruptcy, E. L. Cobb, by his attorney, and prays the Court to review the decision and order of the Referee herein, made and entered on the 30th day of December, 1920, allowing the claim of the McDonald-Weist Logging Co. for the sum of \$28,328.90, besides interest, as a general claim against the estate; and the trustee alleges that

the said decision and order are erroneous in the following respects, to wit:

1. It was established by the evidence that the said claimant was a foreign corporation, and had failed to comply with the laws of Alaska governing foreign corporations doing business in the Territory, and the Referee should have disallowed said claim as a whole on that ground.

2. The evidence failed to show, in any event, more than about \$24,000.00 due, in that the claimant was not entitled to recover and prove for the logs not boomed but left at the spar-tree, and which the record shows were with the consent of claimant abandoned by the trustee.

And the trustee prays that upon such review the claim of the said Logging Company be wholly disallowed.

J. H. COBB,  
Attorney for Trustee.

Service of the foregoing petition and receipt of a copy thereof is admitted this the 31st day of December, 1920.

JOHN RUSTGARD,  
Attorney for said Claimant, the McDonald-Wiest  
Logging Co.

Filed December 31, 1920. H. B. Lefevre, Referee  
in Bankruptcy. [20]

In the District Court of the United States for the District of Alaska, Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

In the Matter of CRAIG LUMBER COMPANY, a Corporation,

Bankrupt.

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WIEST LOGGING COMPANY,  
Respondent.

JOHN H. COBB, Esq., for Petitioner.

JOHN RUSTGARD, Esq., for Respondent.

**Certificate of Referee to Judge.**

I, H. B. LeFevre, one of the referees of said court in bankruptcy, do hereby certify that in the course of the proceedings in said cause before me the questions arose that are shown in my decision of the controversy with a summary of the evidence relating thereto and the findings and order of the referee thereon.

And the said questions are certified to the Judge for his opinion thereon.

Dated at Juneau the 31st day of December, A. D. 1920.

H. B. LE FEVRE,

Referee in Bankruptcy, First Division of Alaska,  
Box 613 Juneau, Alaska.

Filed in the District Court, District of Alaska,  
First Division. Dec. 31, 1920. J. W. Bell, Clerk.  
By V. F. Pugh, Deputy. [21]

---

In the District Court for the District of Alaska,  
Division No. One, at Juneau.

No. 2057-A.

In the Matter of THE CRAIG LUMBER COMPANY, a Corporation.

Bankrupt.

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WEIST LOGGING COMPANY,  
Respondent.

J. H. COBB, for Petitioner.

RODEN and DAWES, for Respondent.

**Memorandum Opinion.**

Delivered ——, 1921.

JENNINGS, Judge:

The McDonald-Weist Logging Company is a corporation organized under the laws of the State of Washington. It made an abortive effort to comply with the laws of the Territory of Alaska requiring corporations to file certain papers before doing business in the said territory. The Craig Lumber Company was also a foreign corporation, and duly complied with the requirements of the laws of said

territory concerning the doing of business within the said territory.

On the 2d day of January, 1918, these corporations entered into a contract whereby the former was to cut logs for the latter. The logs to be cut belonged to the Government. The McDonald-Weist Company was to cut and raft the logs; the Craig Lumber Company was to pay the Government stumpage, and to do all the work of towing the logs to their mill situated at Craig. [22]

Under this contract the McDonald-Weist Company cut and rafted 3,779,426 feet of logs on the dates hereinafter mentioned and of the money value set opposite the respective dates, to wit:

1918

June 1st .....	\$6067.80
July 6th .....	3020.00
July 31st .....	4200.10
August 1st .....	5784.30
September 30th .....	2978.70
October 10th .....	8890.80
November 22d .....	6852.56

---

Total value.....\$37794.26

On December 20, 1918, the Craig Lumber Company directed the McDonald-Weist Company to discontinue cutting logs under the aforementioned contract. At that time the McDonald-Weist Company had in the woods 300,000 feet of logs already cut, but not rafted, under the contract. The Craig Lumber Company made certain payments from time to time, and on the said 20th of December,

1918, its total payments had amounted to the sum of \$10,544.57; since said date it has made no payments.

On the 19th day of March, 1920, the Craig Lumber Company was adjudged to be a bankrupt. A trustee was duly elected on May 28, 1919. The McDonald-Weist Company duly filed with the trustee a claim for \$27,871.50, alleging that amount to be due under said contract, maintaining that it has a preferred claim for that amount on the proceeds of the sale of logs and the lumber manufactured therefrom, (said proceeds now being in the hands of the trustee), by reason of a lien notice which it had theretofore filed.

The trustee objected to the claim upon two grounds,—1st, that as the McDonald-Weist Company had not complied with the requirements of the statute it was not authorized to do business in Alaska and any contract made by it was void and could not be enforced in the bankruptcy court; 2d, that even if it had power to enforce its claim in the bankruptcy court, still its lien had no standing in court on account of the fact, as alleged, that the statute gives a lien only to persons performing labor upon logs and not to contractors cutting logs.

[23]

The referee decided, 1st, that the fact that claimant was a foreign corporation which had not complied with said statute did not preclude it from asserting its lien or filing its claim in bankruptcy; 2d, that the statute of Alaska gives a lien only to laborers and not to contractors, and that as the

claimant was a contractor and not a laborer it follows as a matter of law that the said claimant had no lien. The referee allowed the claim but refused to make it a preferred claim.

Both sides appealed from the decision of the referee.

The matters certified to the Court are as follows: Did the referee commit error in holding (1) that the McDonald-Weist Company had standing in court to prosecute this claim; (2) that the said company did not have a preferred claim?

As to the first question, the trustee calls the attention of the Court to section 660 of the Compiled Laws of Alaska, 1913, which provides,

“That if any foreign corporation or company fails to comply with the provisions of this chapter (chapter 23) all its contracts with citizens of the District shall be void as to the corporation or company, and no court of the District or of the United States shall enforce the same in favor of the corporation or company so failing.”

It is difficult, however, to see how this section at all affects the matter in controversy, for the reason that the Craig Lumber Company is not a citizen of the District. It is itself a foreign corporation, and therefore a provision of law that no court shall enforce the same (meaning thereby contracts with citizens of the District) does not apply.

Our statute relating to foreign corporations doing business in the District of Alaska does not make void the contracts of corporations which do business

without complying with the statutory requirements, except such contracts as are made with citizens of Alaska. The contracts of a noncomplying corporation with others than citizens of Alaska is voidable at the election of the other [24] party. The statute also prescribes a penalty for noncomplying corporations doing business, to wit: They shall forfeit the sum of \$25.00 per day. (See section 657.)

The effect of such a provision is not to make contracts void.

5 Thompson on Corporations, sec. 6708.

Two foreign corporations may do business with each other within the District of Alaska, without filing any articles, appointing any agents, or taking any other steps, and just so long as they deal with each other only, their contracts are voidable, not void. In such case they would incur the danger of the Attorney General bringing a suit to recover \$25.00 per day for every day either of them shall so neglect to file the papers required by the statute. It is only when a foreign corporation which has failed to comply with the statutory requirements deals with a citizen of the District that the contracts are void, and the Court is enjoined not to enforce the same in favor of the corporation or company which so fails.

“Voidable at the election of the other party thereto” means, in this case, “voidable at the election of the Craig Lumber Company.” The question, therefore, is, has the Craig Lumber Company ever elected to avoid the contract in question? It is apparent, I think, that so far from electing to avoid

the contract in question, the Craig Lumber Company has emphatically elected to stand by the contract. It has received benefits from the contract and has paid more than \$10,000.00 in various sums on account from time to time,—but now, after the contract has been in force for more than twelve months, the trustee, who was only appointed on May 28, 1919, assumes to make an election. I do not think he has the power to do so. The Craig Lumber Company itself already having made an election is bound by the same. It can make but one election—it cannot elect to accept the logs and pay for part of them and not pay for the remainder. If the bankrupt could not make a further election, how can the trustee?

As to the first point, therefore, the decision of the referee is upheld. [25]

As to the second point, to wit, whether or not the claim of the McDonald-Weist Company should be considered as a preferred claim: Our logger's lien statute is in derogation of the common law, and must be strictly construed in so far as it attempts to create a lien in favor of persons not in possession of the personal property upon which labor is performed. It is true that being a remedial statute it must be liberally construed so far as to affect the purpose and intent of the legislature. The purpose and intent of the legislature must be gathered from the terms of the act, and it seems to me that the provision creating liens upon logs was intended to benefit persons who performed labor upon logs. I cannot see anything in the statute which even

squints at the idea that contractors who perform no manual labor on or about the logs shall have a lien therefor. The lien is given to the person who does the work so that the fruits of his labor may not be lost by a sale by the party for whom the labor is done. Under said statute any employee of the McDonald-Weist Company would have a lien upon the logs, if his claim was duly filed, but how the McDonald-Weist Logging Company would have a lien upon the logs is not apparent, for it has performed no labor, although some of its stockholders may have done so.

I am cited to the following cases:

Kronback Lumber Co. vs. Williams Bros., 75 S. W. 854 (Ark.), but it seems that that case is an authority against the party who cites it, for the Court there says:

“As to contractors, we have several times held that a contractor is not a laborer within the meaning of the statute giving persons liens who performed work and labor, the statute being intended to protect the actual laborer, and does not apply to contractors or those who only superintended the labor of others.”

It is true that the Court in that case said that the Williams Brothers, the contractors, would have a lien for the *work actually performed* by them, but it also said that “as the evidence does not show the value of this work, we are unable to enter a final decree here.” [26]

Allen vs. Roper, 86 S. W., page 836, does not touch the question here under consideration.

Martin vs. Wakefield, 43 N. W. 966, simply holds that manual labor includes the use of the implements or instrumentalities actually used in and necessary to the performance of such labor, such, for instance, as a team, the Court saying:

“A man and his team are employed on the work at a gross price for both. The fact that the employer may have them work separately the whole or a part of the time can make no difference.”

Breault vs. Archambault, 67 N. W. 346, simply holds that a blacksmith employed at the camp in shoeing horses and repairing sleds and in mending and keeping in order the tools used by the men actually engaged in the common enterprise is also entitled to a lien.

Carver vs. Bagley, 81 N. W. 757, is in favor of the claimant, but the decision is a mere *ipse dixit*. No authorities of any kind are cited, the statute is not given, and as an authority the case is not of a very compelling character.

To the contrary, see 17 R. C. L., sec. 43.

In the cases of Day vs. Green, 127 P. R. 772, and of Schultz vs. Shively, 143 P. R. 1115, cited in support of the lien, the point in question here was not suggested.

The decision of the referee on this point is also upheld.

Filed in the District Court, District of Alaska, First Division. May 9, 1921. J. W. Bell, Clerk. By V. F. Pugh, Deputy. [27]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

No. 2057-A.

In the Matter of THE CRAIG LUMBER CO., a  
Corporation,

Bankrupt.

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WEIST LOGGING CO.,

Respondent.

**Order Affirming Decree of Referee.**

This cause came on duly to be heard before the District Court for Alaska, Honorable Robert W. Jennings presiding, at Juneau, on the 9th day of May, 1921, upon an appeal by the McDonald-Weist Logging Co., a corporation, claimant, from an order and decree of H. B. LeFevre, referee in bankruptcy, allowing the claim of the said McDonald-Weist Logging Co. for \$27,871.50, with interest thereon from December 20, 1918, at eight per cent per annum, as a general claim, but refusing to allow the same as a secured claim upon the proceeds of certain logs and lumber in the hands of the trustee; and upon the appeal by the trustee from the said order and decree of the referee refusing to expunge said claim from the list of claims against the bankrupt; Messrs. Roden & Dawes appearing for the

McDonald-Weist Logging Co., and Mr. J. H. Cobb appearing for the trustee; and the Court having heard the arguments of counsel and duly considered the same,—

IT IS CONSIDERED AND ADJUDGED by the Court that the aforementioned order and decree of H. B. LeFevre, as Referee in Bankruptcy, be and the same is hereby affirmed, and the cause [28] remanded to Referee in Bankruptcy for further proceedings.

Done in open court, at Juneau, Alaska, this the 14th day of May, A. D. 1921.

ROBERT W. JENNINGS,  
Judge.

Filed in the District Court, District of Alaska, First Division. May 14, 1921. J. W. Bell, Clerk. By L. E. Spray, Deputy.

Entered Court Journal No. Q, page 278. [29]

---

In the District Court of Alaska, Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

No. 2057-A.

In the Matter of THE CRAIG LUMBER CO., a Corporation,

Bankrupt.

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WEIST LOGGING CO.,

Respondent.

**Assignments of Error.**

Now comes E. L. Cobb, trustee in bankruptcy in the above-entitled and numbered cause, by his attorney, and assigns the following errors committed by the Court on the trial and in the rendition of the judgment and decree of the Court, and upon which he will rely in the Appellate Court:

**I.**

The Court erred in ruling and holding that the McDonald-Weist Logging Co., a foreign corporation, could prosecute its claim in the bankruptcy court notwithstanding its failure to comply with the laws of Alaska authorizing foreign corporations to do business in the territory.

**II.**

The Court erred in ruling and holding that the defense of a failure to comply with the laws of Alaska governing foreign corporations doing business in the territory could only be interposed in this case by the bankrupt, the other party to the contract, but could not be interposed by the trustee.  
[30]

**III.**

The Court erred in sustaining the claim of the McDonald-Weist Logging Co. as a valid claim against the bankrupt and in refusing to expunge said claim from the list of claims against said bankrupt.

And for said errors the trustee prays that the said judgment and decree of the District Court and of the referee be reversed and the cause remanded,

with instructions to expunge said claim from the list of approved claims against the bankrupt; and for such other orders and decree as to the Court may seem proper.

J. H. COBB,  
Attorney for Trustee and Appellate.

Filed in the District Court, District of Alaska, First Division. May 14, 1921. J. W. Bell, Clerk. By L. E. Spray, Deputy. [31]

---

In the District Court for the District of Alaska, Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

No. 2057-A.

In the Matter of THE CRAIG LUMBER CO., a Corporation,

Bankrupt.

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WEIST LOGGING CO.,

Respondent.

**Petition for Allowance of Appeal and Order  
Allowing Same.**

Now comes E. L. Cobb, trustee in bankruptcy in the above-entitled and numbered cause, by his attorney, and considering himself aggrieved by the order, judgment and decree of the District Court rendered

herein on the 14th day of May, 1921, affirming the judgment of the Referee allowing the claim of the McDonald-Weist Logging Co. as a general claim against the bankrupt estate, and having filed his assignments of error herein, most respectfully prays that the Court will be pleased to allow an appeal from said decree to the Honorable United States Circuit Court of Appeals for the Ninth Circuit.

J. H. COBB,  
Attorney for Trustee.

Upon consideration of the above and foregoing petition, IT IS ORDERED that the appeal prayed for be, and the same is hereby, allowed.

Done in open court this the 14th day of May, 1921.

ROBERT W. JENNINGS,  
Judge.

Filed in the District Court, District of Alaska, First Division. May 14, 1921. J. W. Bell, Clerk. By L. E. Spray, Deputy.

Entered Court Journal No. Q, page 278. [32]

In the District Court for the District of Alaska,  
Division Number One, at Juneau.

IN BANKRUPTCY—No. 31.

No. 2057-A.

In the Matter of THE CRAIG LUMBER CO., a  
Corporation,

Bankrupt.

E. L. COBB, Trustee,

Petitioner,

vs.

McDONALD-WEIST LOGGING CO.,

Respondent.

**Citation on Appeal.**

The President of the United States of America, to  
the McDonald-Weist Logging Co., a Corporation,  
and to Messrs. Roden & Dawes, Its Attorneys,  
GREETING:

You and each of you are hereby cited and ad-  
monished to be and appear at the United States  
Circuit Court of Appeals for the Ninth Circuit, to  
be holden in the city of San Francisco, State of  
California, within thirty (30) days from the date  
hereof, pursuant to an order allowing an appeal from  
a decree in a cause lately pending in said court between  
E. L. Cobb, trustee in bankruptey of the Craig Lumber  
Co., a corporation, bankrupt, and you as a claimant  
against said bankrupt, then and there to show cause,  
if any there be, why the decree mentioned in said

order should not be reversed and speedy justice done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, this the 14th day of May, 1921, and of the Independence of the United States the one hundred forty-fourth.

ROBERT W. JENNINGS,

Judge.

Attest: J. W. BELL,

Clerk.

Service of the above and foregoing citation admitted this the 14th day of May, 1921.

RODEN & DAWES,

Attorneys for McDonald-Weist Logging Co.

Filed in the District Court, District of Alaska, First Division. May 14, 1921. J. W. Bell, Clerk. By L. B. Spray, Deputy. [33]

---

In the District Court for Alaska, Division No. 1, at Juneau.

IN BANKRUPTCY—No. 31.

In the Matter of THE CRAIG LUMBER CO., a Corporation,

Bankrupt,

E. L. COBB, Trustee,

Appellant,

vs.

McDONALD-WEIST LOGGING CO., a Corporation,

Appellee.

**Praeice for Transcript of Record.**

To the Clerk:

You will please make up a transcript of the record in the above cause, and include therein the following papers, to wit:

1. Claim of the McDonald-Weist Logging Co. filed May 27th, 1919.
2. Objections of the trustee to said claim filed August 18th, 1919.
3. Decision of the Referee, dated December 28th, 1920.
4. Order allowing claim, dated December 30th, 1920.
5. Stipulation, filed December 15th, 1919.
6. Petition of trustee for review, filed Dec. 31, 1920.
7. Certificate of referee, filed December 31, 1920.
8. Decision of the District Court.
9. Order affirming decree of the referee.
10. Assignments of error.
11. Petition for appeal, and order allowing same.
12. Citation on appeal.
13. Clerk's certificate.
14. This praecipe.

Said transcript to be made up in accordance with the rules of the United States Circuit Court of Appeals for the Ninth Circuit, and of this court.

J. H. COBB,  
Attorney Appellant.

Filed in the District Court, District of Alaska, First Division. May 18, 1921. J. W. Bell, Clerk. By L. E. Spray, Deputy. [34]

In the District Court for the District of Alaska,  
Division No. 1, at Juneau.

**Certificate of Clerk U. S. District Court to Transcript  
of Record.**

United States of America,  
District of Alaska,  
Division No. 1,—ss.

I, J. W. Bell, Clerk of the District Court for the District of Alaska, Division No. 1, hereby certify that the foregoing and hereto attached thirty-four pages of typewritten matter, numbered from one to 34, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the record, prepared in accordance with the praecipe of the attorney for petitioner and appellant on file in my office and made a part hereof, in Cause No. 31—In Bankruptcy, No. 2057-A, wherein Craig Lumber Co., a corporation, Bankrupt, E. L. Cobb, Trustee, is petitioner and appellant, and McDonald-Wiest Logging Co. is respondent and appellee.

I further certify, that the said record is by virtue of the petition on appeal and citation issued in this cause and the return thereof in accordance therewith.

I further certify that this transcript was prepared by me in my office, and that the cost of preparation, examination and certificate, amounting to fifteen and 30/100 dollars (\$15.30), has been paid to me by counsel for appellant.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this twenty-seventh day of May, 1921.

[Seal]

J. W. BELL,  
Clerk.

By L. E. Spray,  
Deputy. [35]

---

[Endorsed]: No. 3699. United States Circuit Court of Appeals for the Ninth Circuit. E. L. Cobb, as Trustee in Bankruptcy of the Craig Lumber Company, a Corporation, Bankrupt, Appellant, vs. McDonald-Weist Logging Company, a Corporation, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the District of Alaska, Division No. 1.

Filed June 9, 1921.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

